



Commonwealth
of Massachusetts

OCPF Online

www.mass.gov/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

August 19, 2004

AO-04-12

Aisha M. Tator
Northeastern Retail Lumber Association
585 North Greenbush Road
Rensselaer, NY 12144

RE: Fundraising event for candidate

Dear Ms. Tator:

This letter is in response to your July 28, 2004 request for an advisory opinion.

You have stated that the Northeastern Retail Lumber Association is a non-profit, regional trade association with a local affiliate in Massachusetts, the Massachusetts Retail Lumber Dealers Association (MRLDA). MRLDA has 250 members, including corporations. Each member business has designated an individual as the contact person to receive your correspondence. The MRLDA has a political action committee, the Mass. Retail Lumber Dealer's Association PAC (the PAC), registered with the Office of Campaign and Political Finance.

MRLDA would like to invite the organization's membership to a fundraiser to be held by the organization for a candidate running for the Massachusetts House of Representatives. MRLDA would like to include in the correspondence a card to solicit contributions to the candidate. You have asked three questions regarding the application of the campaign finance law to the fundraiser.

QUESTIONS

- (1) Would the costs associated with mailing the correspondence to 250 members of MRLDA, including postage, be considered a campaign contribution to the candidate?

Answer: No, if the mailing is from the MRLDA rather than the organization's PAC. If the correspondence is from the MRLDA it would be a "membership communication," and payment of the costs would not be a "contribution" subject to the campaign finance law.

- (2) Should the correspondence be from the PAC or the trade organization (MRLDA)?

Answer: The correspondence could be from the MRLDA or the PAC. If the PAC pays for the correspondence, the payment would involve the making of an in-kind contribution by the PAC to the candidate since PACs are not covered by the membership communication exemption.¹

- (3) Are there any other restrictions that I should be aware of?

Answer: Yes, your question raised a number of issues: (a) Because MRLDA receives corporate funds, it may not pay the costs associated with holding the event, or distribute the correspondence beyond the scope of its membership or otherwise contribute to the candidate; (b) MRLDA may only solicit personal (not corporate) contributions from members. The correspondence should clearly state that corporations may not contribute to the candidate; and (c) checks from contributors must be made payable to the candidate, not MRLDA, and should be delivered to the candidate or a member of the candidate's committee at the fundraiser.

DISCUSSION

1. The membership communication exemption

An organization's expenditures to support or oppose a candidate are generally "contributions" or "expenditures" subject to the reporting requirements and limitations of the campaign finance law. Section 1 of the campaign finance law provides an exception, however, for "membership communications." It states that "communications from a membership organization, not including a corporation subject to section eight, to its members and their families on any subject shall not be deemed to be a contribution or expenditure." See M.G.L. c. 55, § 1. A membership organization is "any organization that identifies the individuals within the organization as members. Such organizations include, but are not limited to, clubs, unions and associations." 970 CMR 2.02. By definition, political committees such as MRLDA's PAC may not be membership organizations. See 970 CMR 2.02.

Because membership communications are considered communications to such membership organization's "members and their families," the office stated in AO-97-15 that membership organizations must be comprised "solely of individuals (as distinguished from entities such as trusts, corporations, PCs and partnerships)." We now believe that such an interpretation was unduly restrictive, and that a trade or other organization may have business entities as members and still be able to distribute communications to members and their families that are not "contributions" or "expenditures" subject to the campaign finance law. Because failure to comply with the disclosure requirements and limitations of the campaign finance law can be punished as a crime, the office believes the exemption should not be construed in a manner that would exclude trade organizations absent an unambiguous requirement for such an interpretation. See Weld v. OCPF, 407 Mass. 761, 766 (1990) (statutes carrying criminal penalties must be narrowly construed). In addition, it is more

¹ If the PAC sends the communication, the PAC's payment of associated costs would involve an in-kind contribution to the candidate, and would be subject to the \$500 aggregate annual limit on contributions by PACs to candidates. See M.G.L. c. 55, § 6.

reasonable to construe the phrase “members and their families” in this context to include individuals from each member organization who wish to receive communications and their families.

For these reasons, MRLDA may properly be considered a membership organization, and it may communicate with persons who represent member entities without such communications being considered contributions or expenditures.

2. Other issues

- (a) Because MRLDA receives corporate funds, it may not pay the costs associated with holding the event or distribute the correspondence beyond the scope of its membership or otherwise contribute to the candidate.

Section 8 of the campaign finance law prohibits direct or indirect corporate expenditures made to influence candidate elections. The prohibition against such corporate expenditures extends to non-profit corporations and other organizations whose dues-paying members include corporations, and to organizations that receive corporate funds. See AO-98-01. Because MRLDA receives corporate funds, it may not make an in-kind contribution to a candidate. Therefore, the costs of the fundraising event may be paid by the PAC (although the amount the total amount the PAC may contribute to the candidate is \$500 during a calendar year), or by the candidate’s political committee.

MRLDA may distribute the announcement of the fundraiser to members only. See AO-00-05, issued to the Gun Owners Action League (GOAL), (a copy of which is enclosed), in which the office stated that a membership organization, which receives corporate funding, may send membership communications supporting or opposing candidates, but only within the scope of the organization’s membership.

- (b) MRLDA may only solicit personal (not corporate) contributions from members. The correspondence should clearly state that corporations may not contribute to the candidate.

Consistent with AO-00-05, a communication to members of MRLDA encouraging members to attend a candidate’s fundraiser and contribute *non-corporate* funds to a candidate should be considered to be a membership communication. The communication solicitation should make it clear, however, that corporate funds may not be contributed.

- (c) Checks from contributors must be made payable to the candidate, not MRLDA, and should be delivered to the candidate or a member of the candidate’s committee at the fundraiser.

MRLDA cannot receive and deposit contributions since if it were to do so, the organization would be operating as a political committee. See AO-98-21. The solicitation and receipt of political contributions is the function of political committees, not membership organizations.

The contributions received in response to the mailing or at the event should be given directly to the candidate or an agent of the candidate’s committee, rather than an officer of the MRLDA’s PAC. This is because the campaign finance law contains a “bundling” provision, which applies to contributions made “through an intermediary or conduit.” See M.G.L. c. 55, § 10A and 970 CMR 1.07. The relevant part of the statute provides that where a PAC or lobbying organization, or an agent of a PAC or lobbying organization, gathers and delivers contribution checks to a candidate, or is identified in writing as having arranged for the making of the contributions, the contributions are

deemed to be from the intermediary as well as the original source of the contributions, and the intermediary is subject to additional reporting requirements. A requirement that contributions be given directly to the candidate or the candidate's committee will avoid application of the bundling provision.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:gb
Enclosure